

REMARKS

The Examiner is requiring an eight-way restriction of the claims as follows:

- I. The instances wherein X is O and R¹, R³, and R⁴ represent nonheterocyclic groups, classified in class 546, subclass 272.1+;
- II. The instances wherein X is O and one of R¹, R³, and R⁴ represents a heterocycle or heteroaryl classified in class 540, 544 and 546, various subclasses;
- III. The instances wherein X is S and R¹, R³, and R⁴ represent nonheterocyclic groups, classified in class 546, subclass 272.1+;
- IV. The instances wherein X is S and one of R¹, R³, and R⁴ represents a heterocycle or heteroaryl classified in class 540, 544 and 546, various subclasses;
- V. The instances wherein X is O and all of R¹, R³, and R⁴ represents an heterocycle or heteroaryl, classified in classes 540, 544 and 546, various subclasses;
- VI. The instances wherein X is S and all of R¹, R³, and R⁴ represents an heterocycle or heteroaryl, classified in classes 540, 544 and 546, various subclasses;
- VII. The instances drawn to compounds not covered by the previous groups, classified in classes 540, 544 and 546, various subclasses; and
- VIII. Claims 12 and 13, drawn to multiple uses classified in class 514, various subclasses.

The Examiner is further requiring the election of species.

In response to the restriction and election requirement, Applicants elect, respectively, Group II and the compound of Example 3 (6-[3-(6-Methyl-pyridin-2-yl)-isoxazol-4-yl]-quinoxaline) for examination purposes. However, as set forth in the Restriction Requirement, the Examiner has indicated that a search of the same group of classes 540, 544 and 546, and various subclasses would encompass Groups II, IV, V, VI and VII. As such, Applicants respectfully request that Groups IV-VII be examined along with Group II. Regardless, Applicants reserve the right to pursue non-elected and/or cancelled subject matter in a divisional application. Furthermore, Applicants respectfully traverse the restriction requirement.

MPEP § 803 states that the two criteria for a proper requirement for restriction are (1) the inventions must be independent or distinct as claimed, and (2) there must be a

serious burden on the Examiner if restriction is not required. Here, the Examiner has not shown that there would be a serious burden on the Examiner if a restriction was not required. The Examiner has shown that only three classes and "various" subclasses need be searched which does not appear to impose a serious burden on the Examiner. For the above reasons, the restriction requirement appears improper. Applicants respectfully request this restriction be withdrawn.

Pursuant to MPEP § 821.04, if the elected product claims are subsequently found allowable, Applicants respectfully request that withdrawn method claims 11 and 12 which depend from or otherwise include all the limitations of the allowable product claims be rejoined.

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 16-1445. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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By: Christine S. Lee

Christine S. Lee
Attorney for Applicant
Reg. No. 42,788

Customer No. 28523
Pfizer Inc.
Patent Department, MS 8260-1611
Eastern Point Road
Groton, Connecticut 06340
(860) 686-2144